

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte ALBERT BAUER

Appeal No. 2006-0278
Application No. 08/998,507

Before FRANKFORT, BAHR and LEVY, Administrative Patent Judges.

BAHR, Administrative Patent Judge.

ORDER UNDER 37 CFR § 41.50(d)

Pursuant to our authority under 37 CFR § 41.50(d), we order appellant to submit a supplemental brief addressing the following issues:

(1) Appellant is required to state, on the record, what portion, if any, of the recitation "means for regulating an increase in pressure in the at least one room relative to an outside pressure, to vary the room pressure in correspondence to the selected room temperature" in claim 44 is a means-plus-function recitation under 35 U.S.C. § 112, sixth paragraph. In so doing, appellant should particularly address whether the language "to vary the room pressure in correspondence to the selected room temperature" is part of the function of the means recitation or simply a statement of intended use.


(2) If appellant identifies a means-plus-function recitation in step (1) above, appellant is required to (a) clearly point out the structure described in appellant's specification that corresponds to such means-plus-function, including a clear and concise explanation of the disclosed control circuitry and algorithm, if any, for achieving such function¹ and (b) explain how such structure differs from the inlet blowers 10, 11, vanes and actuators 33, 37, 35, 31, discharge blower and thermostatically operated damper control boxes 21a, 21b disclosed in Johannsen (US Pat. No. 4,257,318, issued March 24, 1981).

In order to meet a "means-plus-function" limitation, the prior art must (1) perform the identical function recited in the means limitation and (2) perform that function using the structure disclosed in the specification or an equivalent structure. Cf. Carroll Touch Inc. v. Electro Mechanical Sys. Inc., 15 F.3d 1573, 1578, 27 USPQ2d 1836, 1840 (Fed. Cir. 1994); Valmont Indus. Inc. v. Reinke Mfg. Co., 983 F.2d 1039, 1042, 25 USPQ2d 1451, 1454 (Fed. Cir. 1993); Johnston v. IVAC Corp., 885 F.2d 1574, 1580, 12 USPQ2d 1382, 1386 (Fed. Cir. 1989).

Appellant's petition filed December 15, 2003 provides some explanation as to how "a change in the supply air pressure could be used to adjust the pressure in the room" (petition, pages 2-3), but does not clearly point out the structure, including any

¹ Identification in the brief of every means-plus-function and step-plus-function in any independent or separately argued claim and the structure, material or acts described in the specification corresponding to each claimed function is now required under 37 CFR § 41.37(c)(1)(v).

Appellant is given a time period of **TWO MONTHS** from the date of mailing of this order within which to respond to the order. Extension of this time period under 37 CFR § 1.136(a) will not be permitted. Failure to timely comply with this order may result in the sua sponte dismissal of the appeal.


STUART S. LEVY
Administrative Patent Judge

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